Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Report to Congress on Universal Service Under the Telecommunications Act of 1996	)	(Report to Congress)

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.
Robert S. Foosaner
Vice President
and Chief Regulatory Officer

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
1450 G. Street, N.W.
Suite 425
Washington, D.C. 20005
202-296-8111

Date: February 6, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Report to Congress on Universal Service Under the Telecommunications Act of 1996	)	(Report to Congress)

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to the Public Notice of the Federal Communications Commission ("Commission"),1/ Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments in the above-referenced proceeding.

The paramount issue for the wireless telecommunications industry in the universal service proceeding is whether Commercial Mobile Radio Service ("CMRS") providers are obligated by the Communications Act of 1934 ("the Act"), as amended by the Telecommunications Act of 1996 ("TCA '96"), to contribute to state universal service funds. Although the Commission has concluded that CMRS carriers are required to contribute a portion of their intrastate revenues to state funds, wireless carriers assert that

---

1/ Public Notice, "Common Carrier Bureau Seeks Comments for Report to Congress on Universal Service Under the Telecommunications Act of 1996," CC Docket No. 96-45, DA 98-2, released January 5, 1998. *See also* Order, CC Docket No. 96-45, DA 98-63, released January 14, 1998, extending the comment and reply comment filing dates to January 26 and February 6, respectively.

the Act preempts state authority to require CMRS contributions to state universal service funds.2/

Nextel submits these Reply Comments to highlight the importance of including this ongoing legal and policy issue in the Commission's universal service Report to Congress on April 10, 1998 since it involves matters of statutory interpretation and Congressional intent.3/

2/ In fact, the issue was raised by several wireless carriers, including Nextel, in petitions for reconsideration of the Commission's *Universal Service Report and Order*. *See, e.g.*, Nextel Petition for Reconsideration in CC Docket No. 96-45 (July 17, 1997); Vanguard and Comcast Joint Petition for Reconsideration in CC Docket No. 96-45 (July 17, 1997); Universal Service Update: Frequently Asked Questions By Wireless Service Providers, *Public Notice*, Release No. 97-2157 (rel. Oct. 6, 1997(noting that fifty-four parties filed petitions for reconsideration). On December 30, 1997, the Commission denied the petitions in its *Fourth Order on Reconsideration*.

Additionally, the issue is pending before the United States Circuit Court of Appeals for the District of Columbia Circuit. The Cellular Telecommunications Industry Association and Airtouch Communications, Inc. filed a Petition for Review of a Commission decision in a related proceeding, which found that CMRS services are not exempt from state universal service obligations. The Petitioners assert that the Commission's decision on Pittencrieff Communications Inc.'s Petition for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act, *Memorandum Opinion and Order*, FCC 97-343, File No. WTB/POL 96-2 (rel. Oct. 2, 1997) is inconsistent with Section 332(c)(3)(A) of the Communications Act. *See Cellular Telecommunications Industry Association v. FCC, et al.*, Case No. 97-1690 *and consolidated cases*.

3/ For purposes of clarity, Nextel is in no way questioning its obligation to contribute to the support of federal universal service funds.

II. DISCUSSION

Section 332(c)(3)(A) of the Act, which was enacted by Congress in the Omnibus Budget Reconciliation Act of 1993,4/ expressly preempts state rate and entry regulation of CMRS providers.5/ Section 332(c)(3)(A) also states that

> Nothing [therein] shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal service availability of telecommunications service at affordable rates.6/

Therefore, should a CMRS provider become a substitute for landline service in a State, the state commission is entitled to impose requirements on the CMRS carrier "necessary to ensure the universal service availability of telecommunications service at affordable rates." In other words, Section 332(c)(3)(A) expressly limits the imposition of state universal service obligations to those CMRS providers ***that have become a substitute for landline service in the state.*** Otherwise, CMRS providers are not subject to state universal service assessments on intrastate revenues.

Vanguard, Comcast, and the Personal Communications Industry Association ("PCIA") filed Comments supporting this proposition and

---

4/ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(B), 107 Stat. 312, 392 (1993).

5/ 47 U.S.C. Section 332(c)(3)(A).

6/ *Id.*

challenging the Commission's interpretation of the Act.7/ As Comcast stated, the Commission's interpretation of Section 332(c)(3)(A) was incorrect because, according to that section, universal service requirements are applicable only when a CMRS provider has become a substitute for landline service in a state.8/ PCIA argues that the Commission failed to give Sections 332(c)(3)(A) and 254 of TCA '96 their "clear interpretation" preempting CMRS from state universal service obligations.9/ Because Section 254(f), which governs state universal service funds, did not repeal Section 332(c)(3)(A)'s limitation on the application of universal service requirements to CMRS providers, the Commission erred in its interpretation.10/

In addition to the ongoing legal dispute regarding the interpretation of Section 332(c)(3)(A) and Section 254 of the Act, the Commission also should inform Congress of the ongoing policy debate that underlies this matter. The provision of wireless services is inherently interstate as systems are constructed and operated for the purpose of providing ubiquitous service over large geographic areas, without regard for state boundaries.11/ As Vanguard noted, the Commission, in fact, licenses many CMRS

7/ *See* Comments of Comcast at pp. 14-15; PCIA at pp. 5-7; Vanguard at pp. 2-3.

8/ Comments of Comcast at p. 15.

9/ Comments of PCIA at p. 2.

10/ *Id.* at p. 5.

11/ *See, e.g.*, Comments of the Cellular Telecommunications Industry Association ("CTIA") at pp. 2-3.

carriers on a multi-state basis, *e.g.*, Major Trading Areas.12/ The complexities of a wireless system make it very difficult, if not impossible, to know whether a particular call has crossed state lines during transmission. For example, some calls that appear to be intrastate (because they originate and terminate within the same state) may actually be interstate because the radio signal transmitting the call may have travelled to and from a tower in another state.

Moreover, traditional interstate/intrastate revenue separations are not relevant to the operational and billing requirements of wide-area CMRS systems; accordingly, most wireless carriers have not designed their billing systems or call tracking mechanisms to identify or record whether the revenues from a particular call are intrastate or interstate. In other words, the recordkeeping necessary to provide precise or reliable jurisdictional separations is not a part of the business operations of wireless systems; therefore, the necessary billing and tracking systems are not available for tracking revenues for universal service fund purposes. As a result, a wireless carrier cannot determine accurately whether revenues generated from wireless services are actually interstate or intrastate.13/

Congress recognized in enacting the 1993 CMRS provisions of the Act that wireless services are inherently interstate.14/ In

---

12/ Comments of Vanguard at p. 6.

13/ Comments of CTIA at pp. 2-3.

14/ Comments of Vanguard at p. 4.

the legislative history of the 1993 legislation, Congress stated that "mobile services. . . by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."15/ By attempting to simply overlay the traditional wireline statutory paradigm of jurisdictional separations to wireless carriers, the Commission has, in essence, attempted to "place a square peg in a round hole." Wireless carriers' revenues are predominantly interstate; to the extent they are not, carriers cannot delineate interstate from intrastate revenues. The result is an "artificial and arbitrary [separations] process."16/

III. CONCLUSION

In its April Report to Congress, the Commission should apprise Congress of the continuing debate about is rule interpretation that is at odds with the language and aims of Section 332(c)(3)(A). Congress enacted laws that expressly exempt CMRS carriers from state universal service obligations. Nonetheless, the Commission interpreted the law to the contrary. For these reasons, Nextel

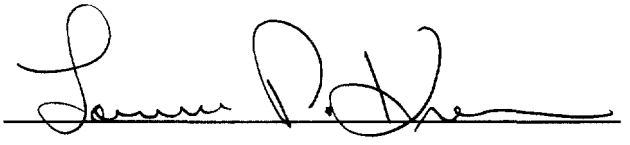
---

15/ Comments of Vanguard at p. 4, *citing* H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993).

16/ Comments of Vanguard at p. 6.

respectfully requests that the Commission include these concerns in its forthcoming Report to Congress.

Respectfully submitted,



Robert S. Foosaner
Vice President
and Chief Regulatory Officer

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
1450 G. Street, N.W.
Suite 425
Washington, D.C. 20005
202-296-8111

Date: February 6, 1998